

**REMARKS**

Applicants respectfully request reconsideration. Claims 116-124 were previously pending in this application. By this amendment, Applicants cancels claims 116-124 without prejudice or disclaimer, and add claims 125-141. As a result, claims 125-141 are pending for examination, of which claims 125 and 134 are independent claims. No new matter has been added.

Applicants expressly reserve the right to file claims 116-124 in a continuing application.

**1. This Amendment is Fully Responsive**

Applicants' previous response filed December 8, 2005 was deemed not fully responsive to the Office Action mailed June 1, 2005 because allegedly all of the claims pending at the time of the response, claims 116-124, were directed to new subject matter, different from originally filed claim 44 and 96, such that there were no claims left available for prosecution. Further, claims 116-124 were withdrawn from consideration as being directed to a non-elected invention.

Although Applicants do not accede to the characterizations of claims 116-124, nor their withdrawal, Applicants have cancelled these claims, and added new claims 125-141.

Claim 125 corresponds to previous claim 44, amended for clarification and to include the additional limitation "selecting a subset of available video programs . . .", support for which can be found throughout the application.

Claim 125 corresponds to previous claim 96, amended for clarification and to include the additional limitation "wherein the system controller . . .", support for which can be found throughout the application.

Accordingly, Applicants respectfully submit that claims 125 and 134 are directed to the subject matter of previously pending, constructively-elected claims 44 and 96, and submit that this Amendment is fully responsive to the June 1, 2005 Office Action.

Should the Examiner not agree that this Amendment is fully responsive, Applicants respectfully request that the Examiner contact Applicants' representative to resolve this issue before issuing another Office Action.

**2. Added Claims 125-133 Patentably Distinguish Over Story**

As noted above, new claim 125 corresponds to previous claim 44, which previously stood rejected under §102(e) as purportedly being anticipated by U.S. Patent No. 5,541,638 (Story).

Applicants respectfully submit that claims 125 patentably distinguishes over the art of record, including Story, for at least the following reasons.

Story is directed to entertainment communication services employing digital audio and video transmission signals (col. 1, lines 6-9). An entertainment signal includes a sequence of discrete expressive works (DEWs) to an end user, which may be either specifically requested by the user or selected according to user-specified parameters (col. 2, lines 14-19). For example, a user defines a sequence of user preference items, each defining a block of time in an entertainment signal, which together comprises a user preference signal. The user preference signal is then communicated to a remotely-located program processor, which selects a plurality of DEWs that conform to the user preference item definitions. An entertainment signal comprising the selected expressive works and then communicated over a communication link through the receiving means located in the proximity of the user (col. 2, lines 20-29).

In contrast, claim 125 recites:

“A method for transmitting video programming from at least one video programming source to at least one customer, comprising the steps of:

transmitting, to at least one customer set top terminal, video programming data from the at least one video programming source;

collecting feedback data from the at least one customer set top terminal, **the feedback data indicating at least the video programming selected by the at least one customer through the at least one customer set top terminal during a predetermined time interval for viewing during the predetermined time interval;**

selecting a subset of available video programs, comprising:

accessing a plurality of content profiles, each content profile indicative of characteristics of content of a respective one of the plurality of video programs, and

applying the feedback data to each individual content profile; and controlling a switch connecting the at least one video programming source to respective nodes in a video distribution system so as to selectively transmit the selected subset of video programs to the at least one customer.” [emphasis added]

Claim 125 patentably distinguishes over Story because Story does not disclose or suggest the method for transmitting video programming to at least one customer that is recited in claim 125, in particular, the step of “collecting feedback data from the at least one customer set top terminal, **the feedback data indicating at least the video programming selected by the at least one customer through the at least one customer set top terminal during a predetermined time interval for viewing during the predetermined time interval”**. As noted above, Story

indicates that a user may expressly request discrete expressive works or indicate user preferences in a user preference signal. However, Story fails to disclose providing feedback data indicative of video programs selected by a customer during a time interval for viewing during the time interval. Such feedback data may be deemed “passive” feedback, as it is feedback not actively provided by the customer, but rather, resulting from the customer’s actual viewing (presuming the viewer watched what is selected during a given time interval). In contrast, the information provided a user in Story is not even “feedback”, as it is provided before viewing even occurs. Further, this information is actively provided by the user, not passively resulting from the user viewing discrete expressive works.

In view of the foregoing, claim 125 patentably distinguishes over the art of record, including Story. Claims 126-133 depend from claim 125 and are patentable for at least the same reasons.

### **3. New Claims 134-141 Patentably Distinguish Over Hendricks**

As noted above, new claim 134 corresponds to previous claim 96, which previously stood rejected under §102(e) as purportedly being anticipated by U.S. Patent No. 5,600,364 (Hendricks). Applicants respectfully submit that claim 134 patentably distinguishes over the art of record, including Hendricks, for at least the following reasons.

Hendricks is directed to television entertainment systems for providing television programming to consumer homes. More particularly, the invention relates to a network controller that monitors, controls and manages a television program delivery network from a cable headend. (Col. 1, lines 33-37).

Referring to Fig. 21, programs viewed by a user and categories of such programs are correlated with advertising categories, e.g., (1) Household Goods/Products, (2) Home Improvement and Maintenance, (3) Personal Hygiene, (4) Entertainment Items and Events, (5) Sporting Goods and Events, (6) Motor Vehicles and Related Products, (7) Foodstuffs and Beverages, and (8) Miscellaneous. (Fig. 21, block 504; Col. 39, lines 7-21). Where, for example, the viewer has watched a sporting event, the Sporting Goods and Events, Home Improvement and Maintenance, and Foodstuffs and Beverages categories may be assigned to that particular sporting event/program and a sports program category. (Col. 39, lines 21-25).

After the programs and program categories are correlated with the advertisement categories (in a Advertisement Categories File), the groups of advertising categories are ranked. (Fig. 21, block 506; Col. 39, lines 27-35). By using data on the viewer's past program selections and demographic information, advertising categories may be ranked according to those likely to be of most interest to that viewer. (Col. 39, lines 35-38).

"After the advertisement categories have been sorted and ranked, the routine selects the top three advertisement **categories** as the targeted categories for a given time slot and viewer." (Fig. 21, block 508; Col. 39, lines 39-43, emphasis added). "Individual advertisements are then chosen from the Advertisements File, with all selections made from the targeted categories." (Fig. 21, block 510; Col. 39, lines 43-45).

In contrast, claim 134 recites:

"In a video transmission network comprising a plurality of customer set top terminals, each customer set top terminal operative to receive video programming data, and a video distribution system comprising a switch for selectively transmitting video programs from a plurality of video program sources to respective nodes, and means for transmitting video programs from the respective nodes to corresponding customer set top terminals, a system comprising:

means for collecting feedback data from at least one of the plurality of customer set top terminals, the feedback data indicating at least video programming selected by at least one customer through the at least one customer set top terminal during a predetermined time interval for viewing during the predetermined time interval; and

a system controller responsive to the collecting means for controlling the switch so as to schedule the presentation of a subset of available video programs to the at least one customer through the video distribution system in response to the feedback data,

wherein the system controller is operative to select the subset of available video programs, comprising accessing a plurality of content profiles, each content profile indicative of characteristics of content of a respective one of the plurality of available video programs, and **applying the feedback data to each individual content profile.**" [emphasis added]

Claim 134 patentably distinguishes over Hendricks because Hendricks does not disclose or suggest the method for transmitting video programming to at least one customer that is recited in claim 134, in particular, the element "wherein the system controller is operative to select the subset of available video programs, comprising accessing a plurality of content profiles, each content profile indicative of characteristics of content of a respective one of the plurality of available video programs, and **applying the feedback data to each individual content profile.**"

Rather, Hendricks discloses that, in selecting advertisements, feedback data in the form of programs and program categories is correlated to advertising **categories**, not *individual* content profiles or respective video programs, as is required by claim 134. Hendricks considers programs and advertisements to be different things, and is only concerned with targeting advertisements based on programs watched, not targeting the programs themselves. That is, Hendricks is not concerned with precisely matching viewer tastes to particular programs for the viewers benefit, but to matching viewer tastes to general categories of advertising, from which advertisements can be selected to fill time slots, for the purpose of improving advertising revenue.

In view of the foregoing, claim 134 patentably distinguishes over the art of record, including Hendricks. Claims 135-141 depend from claim 134 and are patentable for at least the same reasons.

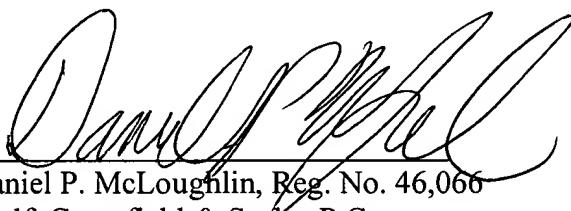
**CONCLUSION**

A Notice of Allowance is respectfully requested. The Examiner is requested to call the undersigned at the telephone number listed below if this communication does not place the case in condition for allowance.

If this response is not considered timely filed and if a request for an extension of time is otherwise absent, Applicant hereby requests any necessary extension of time. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 23/2825.

Respectfully submitted,  
*Herz et al., Applicants*

By:

  
Daniel P. McLoughlin, Reg. No. 46,066  
Wolf, Greenfield & Sacks, P.C.  
600 Atlantic Avenue  
Boston, Massachusetts 02210-2206  
Telephone: (617) 646-8000

Docket No.: P0813.70001US02  
Date: July 25, 2006  
**x7/25/06x**